

MEMORANDUM

NSDM 187

Revision

THE WHITE HOUSE

WASHINGTON

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MEMORANDUM FOR: THE PRESIDENT

FROM: BRENT SCOWCROFT

SUBJECT: Criteria for U.S. Space Cooperation

NSDM 187 (Tab D) established in 1972 the criteria which the U.S. applies to requests for the provision of space launch services for satellites of other countries and to the export of space hardware and technology.

Of these several criteria, one has proven to be divisive to our international space relations and possibly counterproductive to the original purpose of the criterion, and another has been impractical to implement. Several countries making up the European Space Agency (ESA) have perceived these two criteria as reflecting a U.S. intention (1) to convert an advisory obligation of the INTELSAT treaty into a binding one, and (2) to undercut attempts by other nations to develop and manufacture communications satellites. Partly in reaction to this perception, ESA undertook to build a European space launcher, and is now considering whether to require all European payloads to use the launcher instead of the U.S. space shuttle.

NASA is concerned that such a European decision would reduce the utilization rate of the shuttle and increase its launching costs for remaining users (Tab C). NASA further contends that the two criteria offensive to ESA could be modified to remove the objectionable aspects while retaining their essential intent -- to support INTELSAT and to control the transfer of U.S. space technology. NASA believes that with such modification, the move to restrict European launches to the European launcher will be overcome.

From a foreign policy perspective, the 1972 criteria were intended to a gesture of cooperation. The fact that they have had the opposite effect also argued for their reconsideration.

In light of this experience, the NSC Under Secretaries Committee, with the additional participation of the NASA, the Office of Telecommunication Policy, and the Council on International Economic Policy, was directed to examine

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the advisability of altering the 1972 criteria. The USC has unanimously recommended (Tab B) that these criteria be modified as indicated in the draft NSDM at Tab A.

RECOMMENDATION:

That you approve my signing the NSDM at Tab A.

APPROVE _____

DISAPPROVE _____

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

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National Security Decision Memorandum

TO: The Secretary of State
 The Secretary of Defense
 The Administrator, National Aeronautics
 and Space Administration
 The Director, Office of Telecommunications Policy
 Executive Director, Council on International
 Economic Policy

SUBJECT: Revision of NSDM 187

With regard to the possible revision of NSDM 187, the President has reviewed the memoranda of the NSC Under Secretaries Committee of October 7, 1974, and December 18, 1975, and the separate reviews expressed by the Chairman of the Under Secretaries Committee (USC) on August 8, 1975, and by the Director of the Office of Telecommunications Policy on December 13, 1976.

The President has decided that:

- To avoid some of the difficulty in implementing the policy as it now stands, we would replace with the phrase "full consideration should be given to relevant economic factors" the present language which requires prevention of "economic disadvantage" and determination of "net advantage." The specific language for modification of NSDM 187 reflecting this change is provided in the USC report of December 18, 1975.
- We should explore with the European Space Agency the possibility of a blanket agreement which would apply to cases involving substantial assistance and would cover the following end-use assurances normally required of each of the Agency's members individually: the space hardware and technology provided by the U.S. will (1) be used for peaceful purposes, (2) be used in a manner consistent with international agreements and arrangements and (3) not be transferred to a third country without prior U.S. approval. Where assistance is not substantial assurances would be sought from the individual countries concerned.

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- In the case of exports in support of foreign space launching capabilities, we should require that, where substantial U.S. hardware or technology is provided, our approval should be sought if countries developing a launching vehicle desire to use it for launching satellites of third countries. The specific wording to this effect for modifying NSDM 187 is also provided in the USC report of December 18, 1975. Criteria for approving or disapproving such requests should be developed on an interagency basis.
- Those requirements of NSDM 187 relating to INTELSAT are to be rescinded and replaced with the general requirement that the export of space hardware and technology or the provision of space launchers or launch services will be consistent with international agreements and arrangements.

With regard to the last point, in implementing this decision it should be made clear to other countries, to interested members of Congress, and to the Communications Satellite Corporation -- which represents the U.S. in INTELSAT -- that this action does not reflect a lessening of U.S. support of INTELSAT. It should be understood that we will oppose any proposed systems which we consider potentially harmful to INTELSAT, that this opposition will, as necessary, be pressed not only through INTELSAT's established procedures but also through direct diplomatic discussions with the country or countries concerned; and that in cases involving a negative recommendation by INTELSAT, the U.S. will expect countries sponsoring the system in question to make every effort to modify it. Consultations with interested members of the Congress and with COMSAT should be undertaken before any final action on this matter.

Brent Scowcroft

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OFFICE OF TELECOMMUNICATIONS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT

WASHINGTON, D.C. 20504

December 13, 1976

DIRECTOR

MEMORANDUM

To: General Scowcroft
From: Tom Houser *Tom Houser*
Subject: Space-Launching Assistance for
Other Countries

The Under Secretary's Committee report of October 7, 1974 dealing with the "Re-examination of U.S. Policy on Space Launching Assistance for other Countries" (NSDM 187) reflects the opinion of this Office that retention of the so-called "INTELSAT Proviso" in the U.S. Launch Assistance Policy was in the national interest. The Department of State joined us in this view, which was opposed by certain other agencies recommending abolition of that aspect of U.S. policy.

We understand that NASA is currently of the view that continued retention of the "INTELSAT Proviso" would be a material factor in certain efforts within the European Space Agency to favor use of the Ariane launch vehicle during the period when it will provide an alternative launch capability to that of the Space Transportation System being developed by NASA.

By Memorandum of August 8, 1975, the Department of State advised that it no longer favored retention of the "INTELSAT Proviso." However, lest abandonment of the Proviso be misconstrued as a lessening of U.S. support for INTELSAT, the State Department's memorandum suggests that the following points be made clear:

- That the U.S. expects all members of INTELSAT to adhere fully to the requirements for coordination established in the INTELSAT agreement;
- That the U.S. will continue to seek to discourage the establishment of any international communications satellite systems

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which might, in our view, cause significant economic harm to the global system of INTELSAT; and

- That in cases involving a negative recommendation by INTELSAT, the U.S. will expect countries sponsoring the system in question to make every effort to modify the system in the light of factors which had caused lack of support within INTELSAT.

Provided the steps suggested by the State Department are taken, we can now concur in the proposal to rescind this aspect of the Launch Policy. However, we also believe it important that no final decision or public announcement be made in this matter until both The Communications Satellite Corporation and the appropriate members of Congress have had an opportunity to express their views on the proposed revision.

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THE DEPUTY SECRETARY OF STATE

WASHINGTON

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NSC UNDER SECRETARIES COMMITTEE

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August 8, 1975

MEMORANDUM TO THE ASSISTANT TO THE PRESIDENT
FOR NATIONAL SECURITY AFFAIRS

Subject: Space-Launching Assistance
for Other Countries

My memorandum for the President of October 7, 1974, forwarded the report and recommendations of the Under Secretaries Committee concerning the "Re-examination of US Policy on Space Launching Assistance for Other Countries (NSDM 187)."

Taking into account the divergence of views among the interested agencies, the Department of State has reviewed the issues involved in retaining the so-called "INTELSAT proviso" and recommends that this provision of our policy on launch assistance be rescinded.

A change in our policy could, however, be misconstrued as a lessening of US support for INTELSAT unless the following points are made clear:

- That the US expects all members of INTELSAT to adhere fully to the requirements for coordination established in the INTELSAT agreement;
- That the US will continue to seek to discourage the establishment of any international communications

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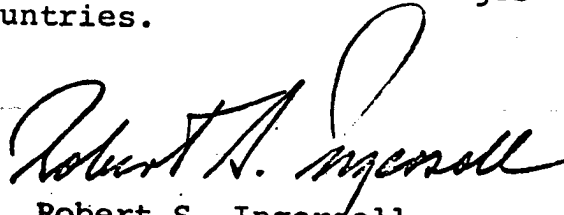
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satellite systems which might, in our view, cause significant economic harm to the global system of INTELSAT; and

- That in cases involving a negative recommendation by INTELSAT, the US will expect countries sponsoring the system in question to make every effort to modify the system in the light of the factors which had caused lack of support within INTELSAT.

Should the President decide to change our policy, consultations should be held with interested members of the Congress and with the Communications Satellite Corporation before any notification of the changes is provided to other countries.



Robert S. Ingersoll
Chairman

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THE DEPUTY SECRETARY OF STATE
WASHINGTON

December 18, 1975

NSC UNDER SECRETARIES COMMITTEE

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NSC-U/SM-92C

MEMORANDUM FOR THE PRESIDENT

Subject: Re-Examination of US Policy on the
Export of Space Hardware and Technology

As directed, the Under Secretaries Committee has reviewed the policy on international space cooperation in technology and launch assistance established by NSDM 187. The Committee has previously reported on those aspects of present policy concerned with providing reimbursable launch services to other countries.

The present report concerns our policy on exporting space technology and providing technical assistance in support of space launching vehicle and satellite programs of other countries. The Committee's conclusions and recommendations are presented below. A detailed report is attached.

Present Policy

NSDM 187 recognizes broad objectives in international space cooperation stated in terms of four areas of national interest: advancement in science and technology, including support and assistance in the development of our national space program; foreign policy; national security; and avoidance of long-term economic disadvantages, while promoting economic benefits for the US through increased exports and trade.

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Provided these objectives are served, NSDM 187 permits unclassified US commercial space hardware and technology to be made available for use in joint or foreign space projects subject to assurances that the projects are for peaceful purposes and are consistent with relevant international agreements and arrangements. As discussed further below, special conditions are imposed in the case of communications satellite projects.

Because space hardware and technology appear on the Munitions List, their export is subject to controls established by the Mutual Security Act of 1954, as amended. Responsibility for the exercise of these controls has been delegated by the President to the Secretary of State by Executive Order 10973 (November 3, 1961). The policy established by NSDM 187 is implemented by a case-by-case review of proposed exports subject to these controls.

Current Issues

Since NSDM 187 was issued, there has been further development of the drive for independent space efforts, especially launcher capabilities, by foreign countries:

- In 1975, ten European countries restructured the European Space Research Organization (ESRO) into the European Space Agency (ESA). They have decided to continue development of the L3S (Ariane) space launching vehicle. This is part of a European compromise package involving several satellite projects and the development of a \$400-million Spacelab at European expense for our own post-Apollo Space Shuttle program.
- Building in large part on the impetus given to its space effort by the 1969 US-Japan Space Cooperation Agreement, Japan has also developed plans for an ambitious space program.

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US commercial technical assistance is being sought in support of both the European and Japanese space programs.

In the light of those developments and experience in implementing NSDM 187 to date, the Under Secretaries Committee has considered, in particular, those aspects of present policy concerned with our economic interests.

Economic Considerations

NSDM 187 reflected the position that the best way of avoiding economic disadvantage was through exporting hardware, i.e., end items, whenever possible and reasonable to do so, rather than exporting technology or the production know-how to produce end items. In addition to providing for efforts to avoid economic disadvantage, NSDM 187 contemplated that the net advantage to the US of specific exports was to be determined in each case.

The Under Secretaries Committee believes that we are fully justified in continuing to take our economic interests into account. However, two aspects need to be clarified.

The first concerns the scope of the legal basis for denying export license applications. The Mutual Security Act provides that export restrictions are to be applied "...in furtherance of world peace and the security and foreign policy of the United States." Economic advantage or disadvantage alone does not serve as a justifiable basis for controlling the export of items on the Munitions List.

However, economic factors have an impact on our security and foreign policy, and in this context, they may be taken into account in deciding whether or not to permit proposed exports. The Under Secretaries Committee considers it important to recognize that actions taken pursuant to NSDM 187 should be within this broader context.

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Experience in implementing NSDM 187 also suggests the need to take into account certain practical difficulties of implementing the present requirement that we seek both to avoid "economic disadvantage" and to determine the "net advantage" of particular exports.

Efforts to quantify and strike a balance between specific economic advantages and disadvantages of particular proposed exports would not be likely to produce precise results in view of the variables involved, especially over the longer term. Therefore, the Under Secretaries Committee believes that the present language of NSDM 187 which requires prevention of "economic disadvantage" and determination of "net advantage" should be replaced with the phrase "full consideration should be given to relevant economic factors." Under this approach we would make a "best effort" in arriving at decisions on technology exports to take any economic advantages and disadvantages into account but would not necessarily make quantitative determinations.

Two problems involving economic considerations require special attention at this time. These involve foreign space launching capabilities and communications satellite projects. These problems are discussed below.

Space Launching Capabilities

The Under Secretaries Committee believes that no disproportionate risk to our national security is presented by the prospect of controlled transfer of selected space technology and hardware for use by the European Space Agency and the Japanese in support of their efforts to acquire space launching capabilities.

From the standpoint of our economic interests, there appears to be no strong economic advantage to us although individual industrial firms would derive short-term benefits. Some possibility of future economic disadvantage arises from potential competition between foreign space launching capabilities and the US Space Shuttle, whose economic viability

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depends in some part on use by the international community in order to hold down the cost per mission.

In the view of the Under Secretaries Committee, there is no reason why we should view with any enthusiasm requests from other countries related to a potentially competitive system such as the L3S space launcher. Nonetheless, taking into account all of our national interests, political and security as well as economic, there is little justification under our established commercial trade policies to deny to the L3S or the Japanese N program selective access to US industry support.

Although potential competition with the Space Shuttle vehicle cannot be wholly precluded, some constraints can be imposed through the following steps:

- By restricting the transfer to third parties of US-provided space hardware and technology. Such restrictions are already contemplated by NSDM 187 and should assist in limiting the emergence of additional independent space launching capabilities; and
- By requiring prior US approval of launchings for third countries where the launching vehicles incorporate substantial US-provided hardware or technology. Such a requirement was not specified in NSDM 187 but was recommended, in the case of Japan, by the Under Secretaries Committee in its separate report on US-Japanese space cooperation. You recently approved this recommendation.

To facilitate administration of controls of exports for projects undertaken by the European Space Agency including satellite projects as well as the L3S launchers, the Under Secretaries Committee recommends that if significant assistance to the development of ESA programs is

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to be offered, we should explore whether ESA, acting on behalf of its member countries, could provide the broad end-use assurances which we require in connection with any proposed significant sales of hardware and technology.

In the case of the proposed requirement that the US agree to any launches for third countries, we would have to be prepared to indicate the criteria we would apply. These criteria would include the requirements that the satellites involved be for peaceful purposes and consistent with relevant international agreements or arrangements. Whether additional criteria should be developed should be considered through normal inter-agency channels.

Relevance of Cooperation

The Under Secretaries Committee recommends that US policy on the transfer of space hardware and technology should remain basically nondiscriminatory. However, during the course of this review the Committee considered whether our policy should indicate explicitly an intention to consider as an additional factor in favor of an export request the cooperation of those countries with which we have joint space projects. At the same time, however, this factor alone should not control the response to requests. Such a change is supported by or would be acceptable to members of the Under Secretaries Committee except as noted below.

The National Aeronautics and Space Administration believes that our policy should indicate explicitly an intention to consider as an additional factor in connection with an export request the cooperation or non-cooperation of the countries concerned. NASA agrees, however, that this factor alone should not control the response to requests.

With respect to this proposal, the Department of State believes that the cooperation or noncooperation of another country in space activities is not, in the final analysis, relevant to the consideration of export

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cases unless the export is required in support of a specific cooperative activity. In the view of the Department of State, even if a country is cooperating with us in one type of space activity, it may well not serve our interests to release technology related to a different type of space activity (where, for example, we may have a significant lead). On the other hand, our relations with many other countries encompass a much broader range of activities than space cooperation. Even if a country is not cooperating with us in space activities, joint cooperation in wholly different areas might be disrupted by rejecting an export request. Moreover, we would lose whatever commercial benefit would result. Taking into account the fact that all agencies agree that this could not be the decisive factor, the Department of State believes that no change should be made in our present policy in this regard.

Communications Satellite Projects

With respect to communications satellite projects, NSDM 187 establishes special requirements where hardware and technology are intended specifically for use in operational communications satellites to provide public international telecommunications services. These requirements have to do with our continuing interest in the economic viability of the International Telecommunications Satellite Organization (INTELSAT).

If parties to the INTELSAT agreement wish to establish satellite systems for international public telecommunications services outside of INTELSAT's global system, they are obligated to provide an opportunity for INTELSAT to consider economic as well as technical aspects. INTELSAT's views, however, are not binding.

The provisions of NSDM 187 related to this problem reserve to the US a substantial area of discretion in deciding whether to assist foreign communications satellite projects. Continuation of these provisions

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was previously considered by the Under Secretaries Committee in reviewing our policy on providing space launch assistance to other countries. A division of opinion emerged among the interested agencies. This division also applies in the case of exports of hardware and technology.

The Department of State, the National Aeronautics and Space Administration, the Arms Control and Disarmament Agency and the staffs of the National Security Council and the Council on International Economic Policy oppose continuation of the special provisions of NSDM 187 related to INTELSAT; the Department of Defense makes no recommendation concerning their retention.

Those agencies favoring discontinuance believe these provisions take us too far in the direction of seeking to impose on others our own judgment in matters which, under the INTELSAT agreement, are left to the parties to decide. They believe the coordination process provided for under the INTELSAT agreement should afford ample opportunity to make our own views known. Finally, while the provisions of NSDM 187 apply to hardware and technology "specifically" intended for relevant communications satellite projects, much hardware and technology has multipurpose uses. Therefore, there is a question as to whether NSDM 187 applies in some cases.

Those agencies opposing continuation note that the 1969 US-Japan Space Cooperation Agreement also includes provisions related to INTELSAT and believe that if similar requirements are not continued in basic US policy, we should be prepared to advise the Japanese that we would not invoke the related provisions of our agreement. This would avoid discrimination against Japan.

The National Aeronautics and Space Administration wishes to elaborate the foregoing statement with the following views in favor of eliminating these provisions of NSDM 187:

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- The existence of the Proviso has, in NASA's view, been a major irritant in international relations in space co-operation matters;
- The Proviso takes us beyond the terms of the INTELSAT agreement itself, and the INTELSAT agreement represents the internationally-negotiated solution to the question, and one which was accepted by the US;
- The INTELSAT Proviso has been used to support arguments for the development of independent launcher capabilities, particularly by France in arguing for the Ariane development; and
- The Proviso cannot, in NASA's view, appropriately be applied to technology or hardware cases involving multipurpose uses having no, or no certain connection with telecommunications. Thus there is a question of the appropriateness of the Proviso's applicability to any launch vehicle and many other cases.

The Office of Telecommunications Policy favors retention of the provisions of NSDM 187 related to INTELSAT. The OTP points out that this policy leaves open the possibility that we would allow the export of hardware and technology even if INTELSAT had rendered an unfavorable advisory opinion. Further, the INTELSAT Proviso is only operative in the very few cases where the export request is targeted specifically for international public telecommunications service applications and, since most requests for export of space hardware and technology would fall into the multipurpose category, the special provision related to INTELSAT would rarely be applied. (The National Aeronautics and Space Administration believes that application of the INTELSAT Proviso

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has been more widespread than indicated by the Office of Telecommunications Policy.)

The Office of Telecommunications Policy doubts that dropping the INTELSTAT Proviso would cause any nation to reassess seriously its commitment to develop an independent launch capability, and dropping the publicly announced INTELSTAT condition could be interpreted as reflecting a lessened US commitment to INTELSTAT. This interpretation would be disturbing to many of INTELSTAT's members, to interested members of the Congress and to the US communications industry.

Finally, the OTP recognizes that the INTELSTAT conditions do not of themselves provide the US with a particularly useful capability. However, the risks associated with dropping the publicly announced and longstanding INTELSTAT conditions are not offset by the potential benefits in reducing the development of competing systems.

Recommendations:

All Members of the Under Secretaries Committee recommend that you approve the following changes in those provisions of NSDM 187 applicable to exports of space hardware and technology:

- To avoid some of the difficulty in implementing the policy as it now stands, we should replace with the phrase "full consideration should be given to relevant economic factors" the present language which requires prevention of "economic disadvantage" and determination of "net advantage." Language reflecting this change is provided in the attached report.
- We should explore with the European Space Agency the possibility of a blanket agreement which would apply

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to cases involving substantial assistance and would cover the following end-use assurances normally required of each of the Agency's members individually: the space hardware and technology provided by the US will 1) be used for peaceful purposes, 2) be used in a manner consistent with international agreements and arrangements and 3) not be transferred to a third country without prior US approval. Where assistance is not substantial assurances would be sought from the individual countries concerned.

- In the case of exports in support of foreign space launching capabilities, we should require that, where substantial US hardware or technology is provided, our approval should be sought if countries developing a launching vehicle desire to use it for launching satellites of "third countries." Additional wording to this effect is also provided in the attached report. Criteria for approving or disapproving such requests should be developed on an interagency basis. Adoption of this recommendation would bring our policy on end-use assurances toward all countries in line with the one recently adopted in NSDM 306 toward Japan.

The Department of State, the National Aeronautics and Space Administration, the Arms Control and Disarmament Agency and the staffs of the National Security Council and the Council on International Economic Policy recommend that those requirements of NSDM 187 relating to INTELSAT be rescinded insofar as all exports of space hardware and technology are concerned.

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The Office of Telecommunications Policy recommends that the requirements and the language of NSDM 187 relating to INTELSAT be retained as far as exports of space hardware and technology are concerned.

The Department of Defense makes no recommendation concerning retention of the requirements of NSDM 187 relating to INTELSAT.

As Chairman of the Under Secretaries Committee, I believe that if the provisions of NSDM 187 related to INTELSAT are rescinded, it will be important to make clear -- to other countries, interested members of the Congress and the Communications Satellite Corporation (COMSAT), which represents us in INTELSAT -- that this action does not reflect a lessening of US support of INTELSAT. It should be possible to preclude any such misunderstanding by affirming that we will oppose vigorously any proposed systems which we consider potentially harmful to INTELSAT; that this opposition will, as necessary, be pressed not only through INTELSAT's established procedures but also through direct diplomatic discussions with the country or countries concerned; and that in cases involving a negative recommendation by INTELSAT, the US will expect countries sponsoring the system in question to make every effort to modify it. Consultations with interested members of the Congress and with COMSAT should, of course, be undertaken before any final action on this matter.

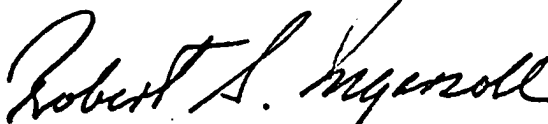
Regarding whether the cooperation or non-cooperation of other countries in our space activities should be explicitly recognized as a factor bearing on the consideration of specific exports, I am concerned that the addition of yet another factor to the complex considerations

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already being weighed would place an added burden on the review process without accomplishing any useful purpose. Since all agencies recognize that this cannot be a decisive factor, I recommend against changing our policy in this respect.



Robert S. Ingersoll
Chairman

Attachment:

Report of the Working Group
